

[Counsel Listed on Signature Page s]

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

In re JDS UNIPHASE CORPORATION  
SECURITIES LITIGATION

**No. C-02-1486 CW (EDL)**

This Document Relates To:

**ORDER REGARDING  
CONFIDENTIALITY**

**ALL ACTIONS**

1 Disclosure and discovery activity in this action are likely to involve production of  
2 confidential, proprietary, or private information for which special protection from public  
3 disclosure and from use for any purpose other than prosecuting this litigation would be  
4 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the  
5 following Order.

6 1. DEFINITIONS

7 1.1 Disclosure or Discovery Material: all items or information, regardless  
8 of the medium or manner generated, stored, or maintained (including, among other things,  
9 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
10 responses to discovery in this matter.

11 1.2 "Confidential" Information or Items: Disclosure or Discovery Material  
12 that is non-public and that a party in good faith believes must be held confidential to protect  
13 personal privacy interests or proprietary commercial or business information, including trade  
14 secrets.

15 1.3 "Highly Confidential" Information or Items: "Confidential"  
16 Information or Items, the disclosure of which the Producing Party in good faith believes would  
17 create a substantial risk of serious injury that could not be avoided by less restrictive means.

18 1.4 Receiving Party: a party that receives Disclosure or Discovery Material  
19 from a Producing Party.

20 1.5 Producing Party: a party or non-party that produces Disclosure or  
21 Discovery Material in this action.

22 1.6 Designating Party: a party or non-party that designates information or  
23 items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly  
24 Confidential."

25 1.7 Protected Material: any Disclosure or Discovery Material that is  
26 designated as "Confidential" or as "Highly Confidential."  
27  
28

1                   1.8     Outside Counsel: attorneys who are not employees of a party but who  
2 are retained to represent or advise a party in this action.

3                   1.9     In-house Counsel: attorneys who are employees of a party.

4                   1.10    Counsel (without qualifier): Outside Counsel and In-house Counsel (as  
5 well as their support staffs).

6                   1.11    Expert: a person with specialized knowledge or experience in a matter  
7 pertinent to the litigation who has been retained by a party or its counsel to serve as an expert  
8 witness or as a consultant in this action. No representative plaintiff or its Counsel may retain  
9 an expert witness or consultant who is (a) a past or current employee or consultant of JDS  
10 Uniphase or of one of its predecessors, (b) a past or current employee or consultant of a  
11 competitor of JDS Uniphase or of one of its predecessors, or (c) at the time of retention,  
12 anticipated to become an employee or consultant of JDS Uniphase or of a competitor of JDS  
13 Uniphase. This definition includes a professional jury or trial consultant retained in  
14 connection with this litigation.

15                  1.12    Professional Vendors: persons or entities that provide litigation support  
16 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
17 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
18 subcontractors.

19                2.     SCOPE

20                       The protections conferred by this Stipulation and Order cover not only  
21 Protected Material (as defined above), but also any information copied or extracted therefrom,  
22 as well as all copies, excerpts, summaries, or compilations thereof (whether in written,  
23 computer or other form), plus testimony, conversations, or presentations by parties or counsel  
24 to or in court or in other settings that might reveal Protected Material.

1           3.     DURATION

2           Even after the termination of this litigation, the confidentiality obligations  
3 imposed by this Order shall remain in effect until each Designating Party agrees otherwise in  
4 writing or a court order otherwise directs.

5           4.     DESIGNATING PROTECTED MATERIAL

6           4.1    Marking of Protected Material (Other Than Deposition Transcripts):

7 Any party to this litigation, or non-party who produces Disclosure or Discovery Material, shall  
8 have the right to designate as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” any  
9 Protected Material it produces. All Protected Material shall bear a legend on each page stating  
10 that the material is “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” In order to speed  
11 the process of producing large volumes of Protected Material, multi-page documents in which  
12 Protected Material is pervasive may be marked “CONFIDENTIAL” or “HIGHLY  
13 CONFIDENTIAL” throughout, with the understanding that portions of those documents not  
14 containing Protected Material can be de-designated through the meet-and-confer process of  
15 Paragraph 5.2. Where it is not possible to affix a legend to particular Protected Material, the  
16 Producing Party shall take reasonable steps to give all Receiving Parties notice of its status as  
17 Protected Material. Where a computer disk has been marked as Protected Material and the  
18 files on it are not individually bates-numbered or identified as Protected Material, all files  
19 contained on the disk shall be considered Protected Material.

20           Mass, indiscriminate, or routinized designations are prohibited. Designations  
21 that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g.,  
22 to unnecessarily encumber or retard the case development process, or to impose unnecessary  
23 expenses and burdens on other parties), expose the Designating Party to sanctions. If it comes  
24 to a party’s or a non-party’s attention that Disclosure or Discovery Material designated as  
25 Protected Material does not qualify for protection at all, or does not qualify for the level of  
26 protection initially asserted, that party or non-party must promptly notify all other parties that  
27 it is withdrawing the mistaken designation.  
28

1                   4.2     Depositions: Deposition testimony may be classified as Protected  
2 Material at the deposition, or at any time during a review period of up to and including 30 days  
3 after receipt of the official transcript of such testimony by counsel for the party whose  
4 information has been disclosed, or in the case of non- parties or others whose information has  
5 been disclosed, up to and including 30 days after the transcript is available for review,  
6 whichever period is longer. Each deposition transcript in its entirety shall be treated as having  
7 been designated “HIGHLY CONFIDENTIAL” during the review period. Designations of  
8 Protected Material made during the deposition will be reasonably identified at the beginning of  
9 the deposition transcript when produced. Designations of Protected Material made during the  
10 review period will be made in writing served on all parties. It will be the responsibility of  
11 counsel of record to take reasonable steps to make sure that Protected Material in deposition  
12 transcripts is used only as expressly permitted in this Order. Party representative(s) attending  
13 any deposition will be temporarily excused from the deposition room at times when testimony  
14 then being designated by another party as “HIGHLY CONFIDENTIAL” is being given.  
15 Expert witnesses who have been approved in accordance with the provisions of paragraph 6.4  
16 may attend depositions in their entirety.

17                   4.3     Contractual Obligations to Non-Parties: During the course of this  
18 action, a party may be requested to produce information that is subject to contractual or other  
19 obligations of confidentiality owed to a non-party. The party subject to the contractual or  
20 other obligation of confidentiality shall timely contact the person to whom the obligation is  
21 owed to determine whether that person is willing to permit disclosure of the confidential  
22 information under the terms of this Order. If that person is willing, the information shall be  
23 produced in accordance with this Order. If the person to whom the obligation is owed is not  
24 willing to permit disclosure of the confidential information under the terms of this Order, the  
25 party seeking the information in this litigation shall be notified, and any documents withheld  
26 on the basis of a contractual or other confidentiality obligation shall be identified on a separate  
27 index stating the reason for withholding the document and the person to whom the obligation  
28

1 of confidentiality is owed. This Order shall not preclude any party from moving the Court for  
2 an order compelling production of such material.

3           4.4    Re-Designation: Inadvertent production of any Protected Material  
4 without a designation of confidentiality will not, standing alone, be deemed to waive a later  
5 claim as to its proper designation, nor will it prevent the Producing Party from designating said  
6 document or material "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" at a later date.  
7 The Producing Party shall comply with Paragraph 4.1 when redesignating Disclosure or  
8 Discovery Material as Protected Material. Following any redesignation of Disclosure or  
9 Discovery Material as Protected Material (or redesignation of "CONFIDENTIAL" material as  
10 "HIGHLY CONFIDENTIAL"), the party receiving such Protected Material shall take  
11 reasonable steps to comply with the redesignation including, without limitation, retrieving all  
12 copies and excerpts of any redesignated Protected Material from persons not entitled to receive  
13 it. However, the Receiving Party shall not be obligated to remove from the public record any  
14 Disclosure or Discovery Material that had been filed with the Court as part of the public record  
15 prior to the Producing Party's redesignation of that Disclosure or Discovery Material as  
16 Protected Material. The Producing Party may move to have any such document sealed.

17           5.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

18           5.1    Timing of Challenges: A party does not waive its right to challenge a  
19 confidentiality designation merely by electing not to mount a challenge promptly after the  
20 original designation is disclosed.

21           5.2    Meet and Confer: A party that elects to initiate a challenge to a  
22 Designating Party's confidentiality designation must do so in good faith and must begin the  
23 process by conferring directly (in voice-to-voice dialogue) with counsel for the Designating  
24 Party. In conferring, the challenging party must explain the basis for its belief that the  
25 confidentiality designation was not proper and must give the Designating Party an opportunity  
26 to review the Protected Material, to reconsider the circumstances, and, if no change in  
27 designation is offered, to explain the basis for the chosen designation. A challenging party  
28

1 may proceed to the next stage of the challenge process only if it has engaged in this meet-and-  
2 confer process first.

3           5.3     Judicial Intervention: A party that elects to press a challenge to a  
4 confidentiality designation after considering the justification offered by the Designating Party  
5 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local  
6 Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis  
7 for the challenge. Each motion must be accompanied by a competent declaration that affirms  
8 that the movant has complied with the meet-and-confer requirements imposed in the preceding  
9 paragraph and that sets forth with specificity the justification for the confidentiality  
10 designation that was given by the Designating Party in the meet-and-confer dialogue.

11           The burden of persuasion in any such challenge proceeding shall be on the  
12 Designating Party. Information classified as Protected Material shall retain its Protected  
13 Material status as well as its category of designation until such time as this Court enters an  
14 order reclassifying such material or stripping it of its Protected Material status; the time to seek  
15 review of the Court's order has expired, no appeal having been taken; or in the event review is  
16 sought, the reviewing court has completed its review and rendered a decision on the matter.

17           6.     ACCESS TO AND USE OF PROTECTED MATERIAL

18           6.1     Basic Principles: A Receiving Party may use Protected Material that is  
19 disclosed or produced by another party or by a non-party in connection with this case only for  
20 prosecuting, defending, or attempting to settle this litigation. It may not use Protected Material  
21 for any other purpose, including, without limitation, any other litigation or any business,  
22 competitive, or governmental purpose or function. Protected Material may be disclosed only  
23 to the categories of persons and under the conditions described in this Order. When the  
24 litigation has been terminated, a Receiving Party must comply with the provisions of Section 7  
25 below, (FINAL DISPOSITION).

1 Protected material must be stored and maintained by a Receiving Party at a  
2 location and in a secure manner that ensures that access is limited to the persons authorized  
3 under this Order.

4 6.2 Disclosure of "CONFIDENTIAL" Information or Items: Unless  
5 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving  
6 Party may disclose any information or item designated CONFIDENTIAL only to:

7 (a) the Receiving Party's Outside Counsel of record in this action,  
8 as well as employees of said Counsel to whom it is reasonably necessary to disclose the  
9 information for this litigation and who have signed the "Agreement to Be Bound by Order"  
10 that is attached hereto as Exhibit A;

11 (b) the former and current officers, directors, and employees  
12 (including In-house Counsel) of the Receiving Party to whom disclosure is reasonably  
13 necessary for this litigation and who have signed the "Agreement to Be Bound by Order"  
14 (Exhibit A);

15 (c) Experts (as defined by this Order) of the Receiving Party to  
16 whom disclosure is reasonably necessary for this litigation and who have signed the  
17 "Agreement to Be Bound by Order" (Exhibit A);

18 (d) the Court and its personnel;

19 (e) court reporters, their staffs, and professional vendors to whom  
20 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to  
21 Be Bound by Order" (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom  
23 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by  
24 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that  
25 reveal Protected Material must be separately bound by the court reporter and may not be  
26 disclosed to anyone except as permitted under this Stipulated Order.



1 (g) the author of the document or the original source of the  
2 information.

3 6.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items:

4 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
5 Receiving Party may disclose any information or item designated “HIGHLY  
6 CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of record in this action,  
8 as well as employees of said Outside Counsel to whom it is reasonably necessary to disclose  
9 the information for this litigation and who have signed the “Agreement to Be Bound by Order”  
10 that is attached hereto as Exhibit A;

11 (b) Experts (as defined in this Order) (1) to whom disclosure is  
12 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by  
13 Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 6.4, below, have  
14 been followed;

15 (c) the Court and its personnel;

16 (d) court reporters, their staffs, and professional vendors to whom  
17 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to  
18 Be Bound by Order” (Exhibit A); and

19 (e) the author of the document or the original source of the  
20 information.

21 6.4 Procedure for Disclosure of “HIGHLY CONFIDENTIAL” Information  
22 or Items to “Experts”: Unless otherwise ordered by the Court or agreed in writing by the

23 Designating Party, a party that seeks to disclose to an “Expert” (as defined in this Order) any  
24 information or item that has been designated “HIGHLY CONFIDENTIAL” first must (1)  
25 identify in writing to the Designating Party the specific HIGHLY CONFIDENTIAL  
26 information that the Receiving Party seeks to disclose to the Expert; (2) receive a written  
27 representation from its Expert that the Expert is not currently affiliated, and has never been  
28

1 affiliated, with any competitor of Defendant JDS Uniphase; and (3) inform the Designating  
2 Party that the Expert has provided the written representation to counsel for the Receiving  
3 Party.

4                   6.5     Protected Material Subpoenaed or Ordered Produced in Other  
5     Litigation:

6 If a Receiving Party is served with a subpoena or an order issued in other litigation that would  
7 compel disclosure of any information or items designated in this action as "CONFIDENTIAL"  
8 or "HIGHLY CONFIDENTIAL," the Receiving Party must so notify the Designating Party, in  
9 writing (by fax, if possible) immediately and in no event more than three court days after  
10 receiving the subpoena or order. Such notification must include a copy of the subpoena or  
11 court order.

12                   The Receiving Party also must immediately inform in writing the party who  
13 caused the subpoena or order to issue in the other litigation that some or all the material  
14 covered by the subpoena or order is the subject of this Order. In addition, the Receiving Party  
15 must deliver a copy of this Stipulated Order promptly to the party in the other action that  
16 caused the subpoena or order to issue.

17                   The purpose of imposing these duties is to alert the interested parties to the  
18 existence of this Order and to afford the Designating Party in this case an opportunity to try to  
19 protect its confidentiality interests in the court from which the subpoena or order issued. The  
20 Designating Party shall bear the burdens and the expenses of seeking protection in that court of  
21 its CONFIDENTIAL MATERIAL, and nothing in these provisions should be construed as  
22 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
23 another court.

24                   6.6     Unauthorized Disclosure of Protected Material: If a Receiving Party  
25 learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or  
26 in any circumstance not authorized under this Stipulated Order, the Receiving Party must  
27 immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use  
28

1 its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons  
2 to whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
3 such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is  
4 attached hereto as Exhibit A.

5           6.7     Using Protected Material in Court: Without written permission from the  
6 Designating Party or a court order secured after appropriate notice to all interested persons, a  
7 party may not file in the public record in this action any Protected Material. A party that seeks  
8 to file under seal any Protected Material must comply with Civil Local Rule 79-5.

9           In the event that Protected Material is to be offered into evidence in any public  
10 hearing or proceeding, including trial, the offering party shall so notify the Court and the Court  
11 shall then consider what steps, if any, should be taken to protect the information.

12           6.8     Own Use: Nothing contained herein shall prevent any Designating  
13 Party from disclosing its own Protected Material to any person as it deems appropriate.

14           7.     FINAL DISPOSITION

15           Unless otherwise ordered or agreed in writing by the Producing Party, within sixty  
16 days after the final termination of this action, each Receiving Party must return all Protected  
17 Material to the Producing Party. As used in this subdivision, “all Protected Material” includes  
18 all copies, abstracts, compilations, summaries or any other form of reproducing or capturing  
19 any of the Protected Material. With permission in writing from the Designating Party, the  
20 Receiving Party may destroy some or all of the Protected Material instead of returning it.  
21 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a  
22 written certification to the Producing Party (and, if not the same person or entity, to the  
23 Designating Party) by the sixty-day deadline that identifies (by category, where appropriate)  
24 all the Protected Material that was returned or destroyed and that affirms that the Receiving  
25 Party has not retained any copies, abstracts, compilations, summaries, or other forms of  
26 reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
27 Counsel are entitled to retain one archival copy of all pleadings, motion papers, transcripts,  
28

1 legal memoranda, correspondence, or attorney work product, even if such materials contain  
2 Protected Material. Any such archival copies that contain or constitute Protected Material  
3 remain subject to this Order as set forth in Section 3 (DURATION), above.

4 8. RIGHT TO FURTHER RELIEF

5 Nothing in this Order abridges the right of any person to seek its modification by the  
6 Court in the future.

7 9. RIGHT TO ASSERT OTHER OBJECTIONS

8 By stipulating to the entry of this Order, no party waives any right it otherwise would  
9 have to object to disclosing or producing any information or item on any ground not addressed  
10 in this Order. Similarly, no party waives any right to object on any ground to use in evidence  
11 of any of the material covered by this Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: September 19, 2005

3 MELVIN R. GOLDMAN  
4 JORDAN ETH  
5 TERRI GARLAND  
6 PHILIP T. BESIROF  
7 MORRISON & FOERSTER LLP  
8 425 Market Street  
9 San Francisco, CA 94105-2482  
10 Telephone: (415) 268-7000  
11 Facsimile: (415) 268-7522

12 By: /s/ Terri Garland  
13 Terri Garland  
14 Attorneys for Defendants  
15 JDS Uniphase Corporation,  
16 Charles J. Abbe, Jozef Straus, and Anthony  
17 Muller

18 Dated: September 19, 2005

19 MICHAEL J. SHEPARD  
20 HOWARD S. CARO  
21 HELLER EHRMAN LLP  
22 333 Bush Street  
23 San Francisco, CA 94104-2878  
24 Telephone: (415) 772-6000  
25 Facsimile: (415) 772-6268

26 MICHAEL L. CHARLSON  
27 J. CHRISTOPHER MITCHELL  
28 HELLER EHRMAN LLP  
29 275 Middlefield Road  
30 Menlo Park, CA 94025-3506  
31 Telephone: (650) 324-7000  
32 Facsimile: (650) 324-0638

33 By: /s/ Howard S. Caro  
34 Howard S. Caro  
35 Attorneys for Defendant  
36 Kevin Kalkhoven

1  
2 Dated: September 16, 2005

3 JOSEPH T. TABACCO, JR.  
4 CHRISTOPHER T. HEFFELFINGER  
5 MICHAEL W. STOCKER  
6 BERMAN DeVALERIO PEASE  
7 TABACCO BURT & PUCILLO  
8 425 California Street  
9 San Francisco, CA 94104-2205  
10 Telephone: (415) 433-3200  
11 Facsimile: (415) 433-6382

12 BARBARA J. HART  
13 JONATHAN M. PLASSE  
14 ANTHONY J. HARWOOD  
15 LISA BUCKSER-SCHULZ  
16 JON ADAMS  
17 GOODKIND LABATON RUDOFF  
18 & SUCHAROW LLP  
19 100 Park Avenue  
20 New York, NY 10017-5563  
21 Telephone: (212) 907-0700  
22 Facsimile: (212) 818-0477

23 By: /s/ Anthony J. Harwood  
24 Anthony J. Harwood  
25 Counsel for Lead Plaintiff  
26 Connecticut Retirement Plans  
27 and Trust Funds

28 PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 9/21/05

/s/ CLAUDIA WILKEN

HONORABLE CLAUDIA WILKEN  
United States District Judge

**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY ORDER**

I, \_\_\_\_\_, [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Order Regarding Confidentiality that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_ in the case of *In re JDS Uniphase Corporation Securities Litigation*, No. C-02-1486 CW. I agree to comply with and to be bound by all the terms of this Order Regarding Confidentiality and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Order Regarding Confidentiality to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Order Regarding Confidentiality, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Order Regarding Confidentiality.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_